

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping Methodologies in Proceedings Involving Certain Non-Market Economies: Market-Oriented Enterprise

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (“the Department”) requests public comment on whether it should consider granting market-economy treatment to individual respondents in antidumping proceedings involving China, the conditions under which individual firms should be granted market-economy treatment, and how such treatment might affect our antidumping calculation for such qualifying respondents.

DATES: Comments must be submitted by thirty days from the publication of this notice.

ADDRESSES: Written comments (original and ten copies) should be sent to David Spooner, Assistant Secretary for Import Administration, U.S. Department of Commerce, Central Records Unit, Room 1870, Pennsylvania Avenue and 14th Street NW, Washington, DC, 20230.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy, Program Manager, AD/CVD Operations or Lawrence Norton, Economist, Office of Policy, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC, 20230, (202) 482-5403 and (202) 482-1579, respectively.

Background

In antidumping proceedings involving non-market economy (“NME”) countries, it is the Department’s usual practice to calculate the normal value for allegedly dumped merchandise being imported into the United States by valuing the NME producer's factors of production using, to the extent possible, prices from a market economy that is at a comparable level of economic development and that is also a significant producer of comparable merchandise. See section 771(c)(4) of the Tariff Act of 1930, as amended (“the Act”). Specifically, section 773(c)(1) of the Act provides for the use of factors of production to determine normal value if two conditions are met:

- (A) the subject merchandise is exported from a non-market economy country; and
- (B) the administering authority finds that available information does not permit the normal value of the subject merchandise to be determined as is done for respondents in market economy countries.

In all past NME proceedings involving China, the Department has found that both conditions of section 773(c)(1) are met and has calculated the normal value based on prices and costs from a surrogate country, in accordance with sections 773(c)(3) and (4) of the Act.

The Department currently employs an industry-wide test to determine whether, under section 773(c)(1)(B), available information in the NME permits the use of the market economy antidumping methodology for the NME industry producing the subject merchandise. This so-called market-oriented industry (“MOI”) test affords NME-country respondents the possibility of market economy treatment, but only on a case-by-case, industry-specific basis. This test is performed only upon request of respondent (companies and government). The Department has outlined three conditions that must be met in order for an MOI to exist: (1) that there be virtually

no government involvement in production or prices for the industry; (2) that the industry be marked by private or collective ownership that behaves in a manner consistent with market considerations; and (3) that producers be found to pay market-determined prices for all major inputs, and for all but an insignificant proportion of minor inputs. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594, 20595 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 1.

The current MOI test was formulated 15 years ago. See Preliminary Determination of Sales at Less Than Fair Value: Sulfanilic Acid From the People's Republic of China, 57 FR 9409 (March 18, 1992). However, as discussed more fully in the Department's March 29, 2007 memorandum, *Countervailing Duty Investigation of Coated Free Sheet ("CFS") Paper from the People's Republic of China - Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China's Present-Day Economy*, (March 29, 2007) ("Georgetown Steel Memorandum") (memorandum is on file in the Department's Central Records Unit in Room B-099 of the main Department building ("CRU") on the record of case number C-570-907), China's economy has evolved significantly over time and its present-day economy "features both a certain degree of private initiative as well as significant government intervention, combining market processes with continued state guidance." Id. at 7. Further, the Department found that while private industry now dominates many sectors of the Chinese economy and entrepreneurship is flourishing, China's economy is best characterized as one in which constrained market mechanisms operate alongside (and sometimes, in spite of) government plans. Id. at 9-10. Although the limits the PRC Government has placed on the role of market

forces are not consistent with recognition of China as a market economy under the U.S. antidumping law, the evolution in China's economy nevertheless has led the Department to conclude that it is possible to determine whether the state has bestowed a benefit upon a Chinese producer (i.e., a subsidy can be identified and measured) and whether any such benefit is specific. Id. at 9. See also Coated Free Sheet Paper from the People's Republic of China: Amended Preliminary Affirmative Countervailing Duty Determination, 72 FR 17484 (April 9, 2007). The Department also stated in the Georgetown Steel Memorandum that the evolution of China's economy together with the features and characteristics of China's present-day economy, including a growing private sector, suggest that modification of some aspects of the Department's current NME antidumping policy and practice with regard to China may be warranted, such as the conditions under which the Department might grant an individual respondent in China market-economy treatment in some or all respects.

Request for Comment

Given the Department's analysis in the March 29, 2007 Georgetown Steel Memorandum regarding China's present-day economy, the Department is requesting public comment on the conditions under which the Department might grant market-economy treatment to individual Chinese respondents, and, if so, how this might affect our antidumping duty calculations for such enterprises. The Department does not preclude the possibility that market-economy treatment for individual respondents in non-market economies other than China might be warranted. At this time however, the Department has only examined China's economy on a country-wide basis.

As noted above, the Department currently has a test to determine whether an industry is market-oriented. However, no industry in China has yet been granted MOI status. Given the high standard that must be met for an industry to obtain MOI status, the Department requests that

parties focus their comments on the conditions and factors that would guide the Department's assessment of the market-orientation of individual respondents, as opposed to industries. In submitting comments, we ask parties to consider whether and how a market-oriented enterprise or limited market-oriented enterprise should be identified and to what extent the Department should rely on a market-oriented enterprise's prices and costs, particularly for those inputs that are inextricably linked to the broader operating economic environment, i.e., labor, land and capital, factors of production that were discussed at length in the Department's recent assessment of China's status as an NME in the antidumping duty investigation of certain lined paper products from China. See Memorandum for David M. Spooner, Assistant Secretary for Import Administration, *Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China ("China") – China's Status as a Non-Market Economy ("NME")* (August 30, 2006) (memorandum is on file in the CRU on the record of case number A-570-901). In finding that China continues to be an NME for purposes of U.S. antidumping law, the Department determined that, despite considerable reforms, the PRC government "retains for itself considerable levers of control over the economy." Id. at 4. Accordingly, while an enterprise may be market-oriented, the cost of certain inputs obtained in the broader economy may necessarily be determined on a non-market basis. Given such a situation in China, we request parties to consider to what extent, if any, a finding of a market-oriented enterprise might be limited and how a respondent's prices and costs within China could be utilized together with certain surrogate prices and costs in our antidumping duty calculations.

Submission of Comments

Persons wishing to comment should file a signed original and ten copies of each set of comments by the date specified above. The Department will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered if time permits. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in the development of any changes to its practice. The Department requires that comments be submitted in written form. The Department recommends submission of comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted either by e-mail to the webmaster below, or on CD-ROM, as comments submitted on diskettes are likely to be damaged by postal radiation treatment.

Comments will be made available to the public in Portable Document Format (“PDF”) on the Internet at the Import Administration website at the following address:

<http://www.trade.gov/ia/>.

Any questions concerning file formatting, document conversion, access on the Internet,
or other electronic filing issues should be addressed to Andrew Lee Beller, Import

Administration Webmaster, at (202) 482-0866, email address: webmaster-support@ita.doc.gov.

David M. Spooner
Assistant Secretary
for Import Administration

Date